

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
CHARLESTON, WEST VIRGINIA**

**IN RE: The Child Of:
ULISSA D. HOWELL,
Petitioner,**

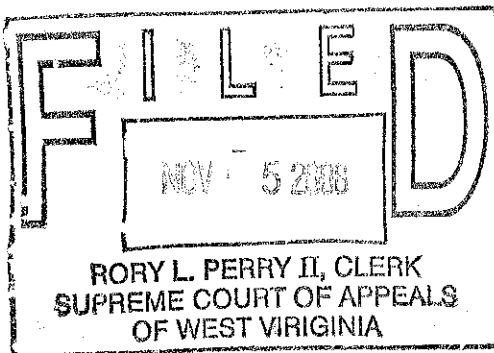
and

//

Supreme Court No. 080480

**JOHN GOODE,
Respondent.**

BRIEF OF APPELLEE, JOHN GOODE



Submitted by:

Gary L. Rymer
WV State Bar No. 3225
Counsel for Appellee
Rymer & Furbee, Lawyers
P.O. Box 236
Middlebourne, WV 26149
(304)758-4448

STATEMENT OF THE CASE

Appellant's Statement of the Case is essentially correct except her rendition of facts contains several assertions which are not only conclusionary, but are not in conformance with the Family Court's Findings of Fact. The essential elements of the case are basically undisputed. These are:

1. The child R.J.G. is over the age of 18 years.
2. The child R.J.G. completed the necessary requirements for a high school diploma at Magnolia High School, Wetzel County, West Virginia in May, 2006.
3. The child R.J.G. was a special education student with **learning** disabilities.
4. The child R.J.G. would have graduated from high school, but for his and the Appellant's request that he be allowed to continue in high school because he was not yet ready to attend college which was his prevocational choice.
5. Although the child, R.J.G., may have received SSI in the past, he was not receiving the same at the time of the hearing in this matter.

ARGUMENT

The thrust of Appellant's argument in this case is that because the child in question, R.J.G., is entitled under **FEDERAL LAW** to continue to attend high school, even though he had undisputably fulfilled all of West Virginia's requirements to graduate from high school, Appellant is therefore entitled to receive child support under § 48-11-103 until he actually does graduate from high school. Although some noises were made by Appellant that perhaps this case fell into the rationale of Kinder v. Schlaegel, 185 W.Va. 56, 404 S.E.2d. 545 (1991), no proof was offered that R.J.G. was in fact

disabled as defined in that and later cases of this court, therefore, the entire legal issue in this case is the proper interpretation of W.Va. Code §48-11-103. It would appear obvious to Appellee that the Legislature's intention in its wording of this section was to continue to provide child support for those children who either by timing of their birthday, or by less than standard progress through the school system, wind up with a high school graduation date past their 18th birthday. It was obviously intended to eliminate those cases where a child was simply enrolled, but not completing courses which would allow the child to obtain a high school diploma. Appellant wants this Court to establish another category of post-eighteen year olds entitled to child support; one that neither requires disability or failure to complete the high school graduation requirements by age 18. In the hearings held in this case it was clear that R.J.G.'s non-reception of a diploma was strictly based upon the desires of he and the Appellant in this action, and not on his ability to obtain a diploma. To expand cases allowing this type of case to be on equal footing with the "disabled child" cases and the "child did not graduate by age 18" cases would obviously be far beyond the Legislature's intention when it passed the relevant code section.

CONCLUSION

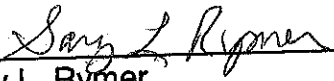
At common law, the obligation to support a child ended at the age of majority or emancipation whichever occurred first, unless the child was a "disabled child." Expansion of that common law to include the child in this case would necessarily be by legislative fiat and not by this Court, see West Virginia Constitution Article VIII, Section 13. Therefore, the Judgment of the Circuit Court of Tyler County, West Virginia, should be affirmed.

Respectfully submitted,

JOHN GOODE

Appelle


By Counsel

A handwritten signature in cursive script, reading "Gary L. Rymer", is written over a horizontal line.

Gary L. Rymer
WV State Bar No. 3225
Counsel for Appellee
Rymer & Furbee, Lawyers
P.O. Box 236
Middlebourne, WV 26149
(304)758-4448

CERTIFICATE OF SERVICE

I, Gary L. Rymer, Counsel for Appellee, hereby certify that I served the foregoing **BRIEF OF APPELLEE, JOHN GOODE** upon the Appellant by mailing a true copy thereof to her counsel of record, Ms. Jodie K.R. Gardill, Esq., at her address of Legal Aid of West Virginia, 1025 Main Street, Suite 715, Wheeling, West Virginia, 26003 on this 3rd day of November, 2008.



Gary L. Rymer
WV State Bar No. 3225
Counsel for Appellee
Rymer & Furbee, Lawyers
P.O. Box 236
Middlebourne, WV 26149
(304)758-4448